

Exhibit 28

Abigail Rodgers

HIGHLY CONFIDENTIAL
Reston, VA

July 29, 2003

1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF OHIO
3 WESTERN DIVISION

**CERTIFIED
COPY**

4 - - - - - x

: HIGHLY

5 THE PROCTER & GAMBLE COMPANY, : CONFIDENTIAL

:

6 Plaintiff, :

:

7 v. : Civil Action No.

: C-1-02-393

8 THE COCA-COLA COMPANY, :

:

9 Defendant. :

:

10 - - - - - x

11 July 29, 2003

12 Reston, Virginia

13 VIDEOTAPED DEPOSITION OF:

14 ABIGAIL RODGERS

15 a Witness in the above-entitled cause, called
16 for examination by counsel for the Plaintiff,
17 pursuant to notice and to agreement of counsel as to
18 time and place, at the law offices of Hale and Dorr,
19 LLP, 11951 Freedom Drive, Reston, Virginia,
20 commencing at 8:51 a.m., before Marney Alena
21 Mederos, RPR, a Notary Public in and for the
22 Commonwealth of Virginia, when were present on

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1 C O N T E N T S

| 2 | WITNESS: | EXAMINATION BY: | PAGE: |
|---|-----------------|-----------------|-------|
| 3 | Abigail Rodgers | Mr. Bassett | 9 |

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7 E X H I B I T S

| 8 | NO. | DESCRIPTION | PAGE: |
|---|-----|-------------|-------|
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| | | | |
|---|---|----------------------|---|
| 9 | 1 | Notice of Deposition | 8 |
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| 11 | 2 | Notice of Deposition | 8 |
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|----|---|------------------------------------|---|
| 13 | 3 | Defendant's Supplemental Answer to | 8 |
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| | | | |
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| 14 | | Plaintiff's Interrogatory No. 19 | |
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|----|---|----------------------------------|----|
| 16 | 4 | 2/28/96 fax to Mr. Braswell from | 43 |
|----|---|----------------------------------|----|

| | | | |
|----|--|---------------------------------|--|
| 17 | | Mr. Minnick, phone message, and | |
|----|--|---------------------------------|--|

| | | | |
|----|--|--------------------------|--|
| 18 | | Memorandum for the Files | |
|----|--|--------------------------|--|

19

| | | | |
|----|---|---------------------------------|----|
| 20 | 5 | 3/1/96 letter and attachment to | 49 |
|----|---|---------------------------------|----|

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|----|--|---------------------------|--|
| 21 | | Dr. Puri from Mr. Minnick | |
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|----|-----------------------------|---|-------|
| 1 | E X H I B I T S (CONTINUED) | | |
| 2 | NO. | DESCRIPTION | PAGE: |
| 3 | 6 | 4/25/96 memorandum and attachment to | 64 |
| 4 | | Mr. Dixon and others from Mr. Braswell | |
| 5 | | | |
| 6 | 7 | 5/22/96 memorandum and attachment to | 74 |
| 7 | | Ms. Kalala and others from Mr. Braswell | |
| 8 | | | |
| 9 | 8 | 11/5/97 letter and attachment to Dr. Puri | 85 |
| 10 | | from Mr. Minnick | |
| 11 | | | |
| 12 | 9 | 3/18/98 unsigned letter to Mr. Gould | 95 |
| 13 | | from Mr. Minnick | |
| 14 | | | |
| 15 | 10 | Handwritten notes | 102 |
| 16 | | | |
| 17 | 11 | 6/3/98 memo to J.D. Weedman from | 115 |
| 18 | | Mr. Minnick | |
| 19 | | | |
| 20 | 12 | 6/9/98 letter to Mr. Minnick from | 120 |
| 21 | | Mr. Poppens | |
| 22 | | | |

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| 1 | E X H I B I T S (CONTINUED) | | |
| 2 | NO. | DESCRIPTION | PAGE: |
| 3 | 13 | Handwritten notes and slide presentation | 122 |
| 4 | | | |
| 5 | 14 | 6/17/98 letter and attachment to | 141 |
| 6 | | Mr. Cassidy from Mr. Poppens | |
| 7 | | | |
| 8 | 15 | 6/17/98 memo to D. Alder and others | 146 |
| 9 | | from Mr. Poppens | |
| 10 | | | |
| 11 | 16 | 6/22/98 memo to Mr. Bancroft and | 153 |
| 12 | | Mr. Ling from Jim | |
| 13 | | | |
| 14 | 17 | Document containing calculations of cost | 156 |
| 15 | | | |
| 16 | 18 | Procter & Gamble's Calcium Citrate | 160 |
| 17 | | Malate Technology binder | |
| 18 | | | |
| 19 | 19 | Press release | 190 |
| 20 | | | |
| 21 | 20 | 4/2/87 memo to Mr. Metcalf from | 192 |
| 22 | | Ms. Allen | |

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| 1 | E X H I B I T S (CONTINUED) | | |
| 2 | NO. | DESCRIPTION | PAGE: |
| 3 | 21 | 11/20/87 memo to Dr. Ingwalson and | 195 |
| 4 | | Dr. Puri from Mr. DeLeon | |
| 5 | | | |
| 6 | 22 | United States Patent No. 4,722,847 | 197 |
| 7 | | | |
| 8 | 23 | 9/9/88 letter to Dr. Varsel from | 200 |
| 9 | | Mr. Gollhofer | |
| 10 | | | |
| 11 | 24 | Document entitled New and Improved | 201 |
| 12 | | Product | |
| 13 | | | |
| 14 | 25 | 11/16/89 memo to Mr. DeLeon from | 206 |
| 15 | | Ms. Kalala | |
| 16 | | | |
| 17 | 26 | 10/29/97 memo to Dr. Puri from | 218 |
| 18 | | Ms. Ramseur | |
| 19 | | | |
| 20 | 27 | 6/29/98 memo and attachment to | 224 |
| 21 | | Mr. Hauser and others from Mr. Poppens | |
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| 1 | E X H I B I T S (CONTINUED) | | |
| 2 | NO. | DESCRIPTION | PAGE: |
| 3 | 28 | Calcium Absorption Study Results | 228 |
| 4 | | | |
| 5 | 29 | 2/1/2000 memo to Ms. Anderson and | 236 |
| 6 | | others from Ms. Killelea | |
| 7 | | | |
| 8 | 30 | Good Health Sells, presentation by | 237 |
| 9 | | Carla McGill | |
| 10 | | | |
| 11 | 31 | 9/20/2001 memo to Ms. Rowles from | 241 |
| 12 | | Mr. Renn | |
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1 A Yes.

2 Q At that meeting that occurred in 1996
3 between the P&G representatives and Coke, was
4 infringement of the '847 patent discussed or raised?

5 A I don't believe so.

6 Q About halfway through that full
7 paragraph on page 4 of Exhibit 3, there's a
8 suggestion that P&G never suggested that TCCC's
9 products infringed the '847 patent. And the
10 context, of course, is these 1996 discussions.

11 Is that accurate, in your
12 understanding?

13 A Yes.

14 Q Did P&G ever threaten to sue Coke if it
15 did not take a license during those 1996
16 discussions?

17 A No.

18 Q Did Coke ever ask P&G whether it
19 believed that Coke was infringing the '847 patent?

20 A Not that I was ever aware of.

21 Q And those licensing discussions in 1996
22 were not successful, correct, or did not result in a

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1 license, correct?

2 A Correct.

3 Q And why not?

4 A Coca-Cola believed that we had an
5 acceptable calcium methodology.

6 Q Okay.

7 MR. BURNS: If we can take a
8 five-minute break here.

9 MR. BASSETT: Sure.

10 THE VIDEOGRAPHER: Off the record at
11 9:14:56.

12 (Recess.)

13 THE VIDEOGRAPHER: On the record at
14 9:17:26.

15 BY MR. BASSETT:

16 Q Ms. Rodgers, I would like to direct
17 your attention to the bottom of page 4 of Exhibit 3,
18 where, according to Coke, in 1997 and 1998, P&G
19 initiated two more licensing negotiations relating
20 to the CCM technology.

21 Do you see that?

22 A Yes.

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1 A No. I'm not aware.

2 Q In any correspondence of which you are
3 aware?

4 A I'm not aware.

5 Q So Coke, as far as you're aware, never
6 asked whether P&G believed it infringed the '847
7 patent, right?

8 A I am not aware of Coke ever asking.

9 Q And each of these three licensing
10 negotiations between Coke and P&G that we've talked
11 about -- 1996, 1997, and 1998 -- were arm's length
12 business negotiations, correct?

13 A They were business negotiations --

14 Q Okay.

15 A -- or business discussions.

16 Q And they were arm's length business
17 negotiations, weren't they?

18 A What -- describe what you mean by arm's
19 length.

20 Q Okay. P&G and Coke are competitors,
21 right?

22 A At that point, they were minor

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1 competitors.

2 Q Did P&G and Coke have any
3 relationship -- any business relationship prior to
4 or during these discussions, other than these
5 discussions of which you are aware?

6 A They participated in joint trade
7 meetings and were on groups together, so I think
8 there were a lot of associations between the two.

9 Q Okay.

10 A I'm not aware of any partnerships.

11 Q Okay. And any -- apart from
12 participating in trade organizations or associations
13 together, were there any business relationships
14 between Coke and P&G of which you were aware in the
15 time frame of these three negotiations?

16 A No.

17 Q And Coke also ultimately did not take a
18 license to any of the CCM technology either in 1997
19 or 1998, correct?

20 A Correct.

21 Q And why not?

22 A Again, I think we believed that the

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1 calcium methods and technology that we had was
2 acceptable.

3 Q Okay. I would like to direct your
4 attention to -- again, to page 5 of Exhibit 3 about
5 halfway down, the paragraph that begins there. And
6 the beginning of that sentence is, during the next
7 four years -- and this is following up after 1998 --
8 P&G remained silent as to any potential infringement
9 of the '847 patent.

10 Have I read that correctly?

11 A Yes.

12 Q Is that accurate?

13 A As far as I know, yes.

14 Q Okay. And P&G never once threatened to
15 sue Coke if it did not take a license, correct?

16 A That's correct.

17 Q And finishing that sentence, according
18 to Coke, P&G remained silent, quote, even while
19 knowing that TCCC continued to spend millions of
20 dollars in expanding and developing at least 12 new
21 product lines for the accused products.

22 Have I read that correctly?